

Before the
Administrative Hearing Commission
State of Missouri



SYDNEY E. EMBRY,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
PUBLIC SAFETY,

Respondent.

No. 14-1433 PO

DECISION

We find that cause exists to deny Sydney E. Embry entrance into a basic training academy because she committed a criminal offense.

Procedure

On August 28, 2014, Embry filed a complaint appealing the Director of the Department of Public Safety's ("Director") decision to deny her entrance into a basic training academy. The Director answered on September 26, 2014.

On October 24, 2014, the Director filed a motion for summary decision. We gave Embry until November 10, 2014, to respond, but she did not respond. We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.¹ Parties may establish facts, or raise a dispute as to such

¹1 CSR 15-3.446(6)(A). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

facts, by admissible evidence.² The Director relies on the documents submitted with the motion: an affidavit identifying Embry's application and certified copies of court records. The following facts are undisputed.

Findings of Fact

1. On March 11, 2011, in the City of Columbia, Missouri, Embry committed the crime of stealing, a Class A misdemeanor, in violation of Columbia city ordinance 16-171.
2. Embry pled guilty to the charge on May 18, 2011. Imposition of sentence was suspended, and she was placed on probation for 18 months.
3. On July 25, 2014, Embry applied to attend the Law Enforcement Training Institute, a basic training course, and disclosed her crime of stealing in her application.
4. The Director denied Embry's application on August 5, 2014.

Conclusions of Law

We have jurisdiction over Embry's appeal.³ Embry has the burden of proving she is qualified to enter into a basic training course.⁴ The Director's answer provides notice of the facts and law at issue.⁵ The Director relies upon § 590.100, which provides:

1. The director shall have cause to deny any application for a peace officer license or entrance into a basic training course when the director has knowledge that would constitute cause to discipline the applicant if the applicant were licensed[;]

and § 590.080.1(2), which authorizes discipline of any peace officer who "[h]as committed any criminal offense, whether or not a criminal charge has been filed[.]" Section 556.016⁶ defines a criminal offense as follows:

² 1 CSR 15-3.446(6)(B).

³ Section 590.100.3. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

⁴ Section 621.120.

⁵ *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984).

⁶ RSMo 2000.

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a “**crime**”. Crimes are classified as felonies and misdemeanors.

According to Columbia City Ordinance § 16-171:

A person commits the crime of stealing if he appropriates property or services of another with the purpose to deprive him thereof, either without his consent or by means of deceit or coercion. Stealing is a class A misdemeanor.

By express terms of the City Code and by direct comparison, the ordinance is substantially the same as the crime of stealing set out in § 570.030, which provides:

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

* . . . * . . . *

9. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

The Director has shown Embry committed a criminal offense, a fact she admitted on her application and in her complaint. We are bound by this record and by § 590.100.3, which bars us from considering the relative severity of the crime giving rise to the Director’s denial or any alleged state of rehabilitation achieved by the applicant since its commission.

The undisputed facts show Embry was charged with and pled guilty to stealing in violation of a city ordinance that is substantially similar to § 570.030. Thus, we conclude that she committed misdemeanor stealing, a criminal offense. The Director has cause to deny her application for admission to a basic training academy pursuant to §§ 590.080.1(2) and 590.100.1.

Summary

We grant the Director's motion for summary decision and cancel the hearing.

SO ORDERED on December 3, 2014.

\\Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner